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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,265	08/16/2001	Wolfgang Neuberger	BJA262A	2710

7590 05/14/2004

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EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/931,265

Applicant(s)

NEUBERGER, WOLFGANG

Examiner

Krisanne Jastrzab (formerly Thornton)

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 12-14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide support for the exclusion of ultraviolet light within the body of the claims.

It is noted that the rejections of the recitations of "bond" and "targeting molecule" are withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Jori U.S. patent No. 6,107,326.

Jori teaches the application of a photosensitizer to a surface followed by illumination of that surface by either ambient or standard lighting, to activate the photosensitizer thereby imparting antimicrobial properties to the surface. The application of the photosensitizer can be in a variety of forms, including topical. The photosensitizer can be formulated to target a particular microbe and it's action is to produce singlet oxygen to destroy microbes. See column 4, lines 59-67, column 5, line 60 through column 6, line 33, and column 8, lines 5-15.

Claims 1-5, 7 and 9-10 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Polony et al., U.S. patent No. 4,318,883.

Polony et al., teach the application of a photosensitizer in an aqueous form, to a substrate, such as a textile, followed by irradiation of the substrate with either an artificial light source or sunlight, to activate the photosensitizer thereby imparting antimicrobial properties to the substrate. The photosensitizer is formulated to target particular microbes. See column 5, lines 53-68, column 7, lines 35-43 and claims 10-11.

Claims 1-2 and 5-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bonnet WO 93/00815.

Bonnet teaches the application of a polymer coating containing a photosensitizer, on a substrate, whereby antimicrobial activity is imparted to the substrate upon illumination thereof by ambient light. Activation of the photosensitizer releases singlet oxygen, and

the photosensitizer is formulated to target particular microbes. Bonnet also teaches covering the substrate after application of the photosensitizer to restrict activation thereof based on need (see page 8, lines 10-15).

Allowable Subject Matter

Claim 12i is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-14 are found to be free of the prior art.

The following is a statement of reasons for the indication of allowable subject matter: the closest prior art of record fails to teach or suggest specific materials of a removable protective layer, nor a product constructed of several sheets having a surface containing a photosensitizer, each sheet protecting the sheet therebelow from activation.

Response to Arguments

Applicant's arguments with respect to claims 1-11 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab (formerly Thornton) whose telephone

number is 571-272-1279. The examiner can normally be reached on Mon.-Wed.
6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Krisanne Jastrzab (formerly
Thornton)
Primary Examiner
Art Unit 1744

May 12, 2004